

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring lode mining claim null and void ab initio. OR MC 1530.

Set aside and remanded.

1. Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land -- Words and Phrases

"Relocation." A relocation of a mining claim is best defined as a location adverse to the prior locations.

2. Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land -- Words and Phrases

"Amended Location." An amended location of a mining claim is best defined as one in furtherance of an earlier, valid location, and a subsequent location referring to the same parcel of land, filed by the same party, changing only the name of the claim, will be deemed an amended location.

3. Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land

An "amended location" generally relates back, where no adverse rights have intervened, to the date of the original location, but where there has been a withdrawal, a

subsequent location relates back only to the extent that such a location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land.

4. Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land

When on appeal from a Bureau of Land Management decision, information is submitted upon which it is alleged that a location relates back to a prewithdrawal location, which information has not been evaluated by BLM, the decision may be set aside and the case remanded.

APPEARANCES: Daniel H. Skerritt, Esq., Lindsay, Nahstoll, Hart, Neil & Weigler, Portland, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

James C. Haight has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 9, 1978, declaring the Black Velvet lode mining claim null and void ab initio because it was located on land withdrawn from mineral entry under the mining laws, subject to valid existing rights, pursuant to Public Land Order No. 5361, 38 FR 20327 (July 31, 1973), setting aside the land for the Byram Gulch Municipal Watershed. The subject land is situated in the NW 1/4 sec. 18, T. 14 S., R. 32 E., Willamette meridian, Grant County, Oregon, within the Malheur National Forest.

It is well established that a mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. E.g., Ray L. Virg-in, 33 IBLA 354 (1978). The subject land was withdrawn on July 24, 1973, and the notice of location was filed in the Grant County clerk's office on July 2, 1976, well after the date of the withdrawal.

In his statement of reasons for appeal, appellant contends that the subject location was merely a "relocation" of the Chromine lode claim which was originally filed in the Grant County clerk's office on August 14, 1957. Pursuant to OR. REV. STAT. § 517.060, appellant argues, the "refiling of the claim relates back to the date of the original location." In the 1957 location notice the Chromine claim is described as lying "adjacent to and parallel to the 1500 foot Western line of the Billie Girl claim." In the 1976 location notice, the claim is described as "adjacent to and contiguous with the north boundary of the Iron King (Billie Girl) claim."

[1, 2] The doctrine of relation back is well recognized in the law. See American Law of Mining § 8.25 (1974); Morrison, Mining Rights, 16th ed. (1936) at 159-163. An "amended location" will generally relate back to the date of the original location where no adverse rights have intervened. An "amended location" is best defined as a location made in furtherance of an earlier valid subsisting location. It is distinguished from a "relocation" which is best defined as adverse to the original location. R. Gail Tibbetts, 43 IBLA 210 (1979). The original location may have been lost by the failure to perform assessment work.

[3, 4] Because of the intervening withdrawal, the subsequent location would be valid only to the extent it does not enlarge the rights appurtenant to the original location. R. Gail Tibbetts, *supra* at 220. The question therefore is whether appellant's 1976 notice of location constituted an "amended location," a "relocation" or a new location. Where the subsequent location refers to the same parcel of land, filed by the same party, changing only the name of the claim, the location will be deemed an "amended location". Here, however, it is not clear as to whether the July 2 location refers to any portion of the same parcel of land. Because BLM has not had an opportunity to review appellant's submissions, the case should be remanded.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for appropriate action.

Joseph W. Goss  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joan B. Thompson  
Administrative Judge

